

IN THE UTAH COURT OF APPEALS

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In the interest of J.D. and)	MEMORANDUM DECISION
S.D., persons under eighteen)	(Not For Official Publication)
years of age.)	
_____)	Case No. 20060285-CA
)	
A.M.,)	F I L E D
)	(June 2, 2006)
Appellant,)	
)	2006 UT App 230
v.)	
)	
R.D.,)	
)	
Appellee.)	

Third District Juvenile, Salt Lake Department, 447749
The Honorable Andrew A. Valdez

Attorneys: Terry R. Spencer, Sandy, for Appellant
Dean B. Ellis, West Valley City, for Appellee
Martha Pierce and Anthony Ferdon, Salt Lake City,
Guardians Ad Litem

Before Judges Greenwood, McHugh, and Orme.

PER CURIAM:

A.M. (Mother) appeals the termination of her parental rights. She contends that (1) the juvenile court did not adjudicate the allegations of the termination petition; (2) it was plain error to allow the stepmother to remain in the courtroom after Mother invoked the exclusionary rule; (3) it was plain error to allow the children's therapist to testify as an expert witness; and (4) the evidence was insufficient to support the requirements for termination.

The claim that there was no adjudication of the allegations of the petition is without merit. The juvenile court adjudicated Mother for neglect, as reflected in the adjudication order dated January 28, 2005, and also adjudicated Mother for neglect after the termination hearing.

Mother next claims that the juvenile court committed plain error in allowing the stepmother, who was a witness, to remain in the courtroom. See Utah R. Evid. 615. The juvenile court overruled Mother's objection, allowing the stepmother to remain because she would be a party to any adoption and is the spouse of the children's father. See Utah R. Evid. 615(1)(c) (allowing a person whose presence is shown by a party to be essential to the presentation of its cause to remain). On appeal, Mother asserts that this ruling constituted plain error. "When an exclusion order has been violated, the burden is on the accused to demonstrate that he has been prejudiced to the extent that a mistrial should be granted." State v. McGrath, 749 P.2d 631, 634 (Utah 1988). An appellate court reviews the trial court's denial of a motion for new trial based upon violation of an exclusion order for abuse of discretion. See State v. Cramer, 2002 UT 89, ¶30, 44 P.3d 690.

Mother cites instances in which she claims the stepmother was influenced by the testimony she heard. First, although stepmother testified about her own observations of the children, she also stated she agreed with other testimony she heard. Second, when asked by Mother's counsel if she believed the children were physically abused by Mother, stepmother stated that she did and that her belief was based upon the testimony of the children's therapist. Mother does not claim that this testimony, or any other testimony, was tainted or changed as a result of stepmother's presence in the courtroom. Instead, the alleged prejudice results from unrelated testimony about the stepmother's own observations of the children or from her confirmation of other testimony. Mother has not made a sufficient showing of prejudice to support her claim of error.

Mother next argues that the juvenile court erred in allowing the children's therapist, Melissa Thayne, to testify as an expert. However, she concedes that the therapist could properly testify about her "interaction with the children" and that the children's statements to the therapist fall within an exception to the hearsay rule. After testimony about her qualifications and her contact with the children, and voir dire by Mother's counsel, the court ruled that Thayne was qualified by education and experience to testify as a child therapist. In addition to her other testimony, Thayne testified that she used the "expectations test" to measure the children's responses to photographs. The test provides ranges for categories of abuse or stress. J.D. scored significantly above the normal range for sexual abuse. Thayne also interpreted the children's drawings depicting "good touch" and "bad touch." Counsel for Mother did not object to the testimony as improper, but did cross-examine Thayne about her methods. In the absence of an objection to the testimony as exceeding the allowable scope of testimony as the

children's therapist, Mother must demonstrate plain error. This claim of error fails. In addition, "[i]t is the role of the juvenile court, not this court, to assess the weight and credibility of expert witnesses." In re G.V., 916 P.2d 918, 920 (Utah Ct. App. 1996). Mother has not demonstrated error, plain or otherwise, in allowing Thayne to testify as the children's therapist.

Mother also challenges the sufficiency of the evidence supporting the juvenile court's decision to terminate her parental rights. We "review the juvenile court's factual findings based upon the clearly erroneous standard." In re E.R., 2001 UT App 66, ¶11, 21 P.3d 680. The juvenile court has wide discretion regarding judgments, "based upon not only the court's opportunity to judge credibility firsthand, but also based on the juvenile court judges' 'special training, experience and interest in this field, and . . . devoted . . . attention to such matters.'" Id. (citations omitted). In reviewing a decision to terminate parental rights, we "will not disturb the juvenile court's findings and conclusions unless the evidence clearly preponderates against the findings as made or the court has abused its discretion." In re R.A.J., 1999 UT App 329, ¶6, 991 P.2d 1118.

Mother argues that the evidence was insufficient to support the grounds for termination. The juvenile court found that J.D. was sexually abused by Mother's former boyfriend and Mother neglected the children by failing to protect them from abuse and by allowing further contact even after she was told of the abuse. The juvenile court placed particular emphasis on Mother's own testimony at the termination trial suggesting she now did not believe that J.D. had been sexually abused by her former boyfriend. Testimony from the therapist, as well as that of the father and stepmother, provided evidence of the children's physical and emotional problems. The assertion that there can never be clear and convincing proof of abuse absent medical or scientific evidence is without merit. The evidence was sufficient to support, as grounds for termination, neglect by Mother and her failure to address the concerns that led to the children's removal.

The juvenile court also determined that it was in the best interest of the children to terminate Mother's rights. The court found that Mother did not protect the children or acknowledge them as victims and chose her relationships with men over the children, thereby placing them in danger by her choices. The court found her in contempt for violating its order not to have boyfriends present during visits, largely based upon her own testimony. The court found that the children's behaviors that were indicative of abuse regressed or disappeared after visits

with Mother were suspended. The court further found that the children needed permanency in order to progress therapeutically and that they "live in a status of uncertainty as long as mom is involved in their lives." The court ultimately concluded that it was in the children's best interest to be in a home where they have a sense of permanency and where they have attached and bonded with the father and the stepmother, who desires to adopt them.

We affirm the judgment of the juvenile court.

Pamela T. Greenwood,
Associate Presiding Judge

Carolyn B. McHugh, Judge

Gregory K. Orme, Judge